

**CONTRACT #16
RFS # 339.12-005
FA-06-16428-03**

**Department of Mental Health
& Developmental Disabilities
Western Mental Health
Institute**

**VENDOR:
Guardian Healthcare
Providers, Inc.**



RECEIVED

MAR 19 2008

FISCAL REVIEW

STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
MENTAL HEALTH SERVICES
Cordell Hull Building - 3rd Floor
425 5th Avenue North
Nashville, Tennessee 37243

March 18, 2008

TO: Fiscal Review Committee

FROM: Linda Parker, Director *Linda Parker*
Program Support

RE: Non Competitive Amendment Request
Nursing Services – Guardian Healthcare Providers, Inc.

In 2005 a Request for Proposals (RFP) was issued for nursing services to be provided at the Western Mental Health Institute. Guardian Healthcare Providers, Inc. was the successful proposer. The initial contract contained the term extension clause, which has been exercised each subsequent year to extend the term and add additional funding.

This request is for authorization to extend the term through June 30, 2009 and add dollars. The amount of funding requested for fiscal year 2009 is \$976,781, which would bring the total maximum liability to \$4,679,681. A draft of the proposed Amendment and prior amendments together with the base contract are included for your review.

Please let me know if you need additional information.

REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

RECEIVED

MAR 19 2008

FISCAL REVIEW

Commissioner of Finance & Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS # 339.12-005-06

2) State Agency Name : Department of Mental Health and Developmental Disabilities, Western Mental Health Institute

EXISTING CONTRACT INFORMATION

3) Service Caption : Nursing Services

4) Contractor : Guardian Healthcare Providers, Inc.

5) Contract # FA-06-16428-03

6) Contract Start Date : 07/01/2005

7) Current Contract End Date IF all Options to Extend the Contract are Exercised : 06/30/20108) Current Total Maximum Cost IF all Options to Extend the Contract are Exercised : \$5,865,177.00

PROPOSED AMENDMENT INFORMATION

9) Proposed Amendment # 0410) Proposed Amendment Effective Date : 07/01/2008
(attached explanation required if date is < 60 days after F&A receipt)11) Proposed Contract End Date IF all Options to Extend the Contract are Exercised : 06/30/201012) Proposed Total Maximum Cost IF all Options to Extend the Contract are Exercised : \$5,865,177.00

13) Approval Criteria : (select one)

☒ use of Non-Competitive Negotiation is in the best interest of the state

☐ only one uniquely qualified service provider able to provide the service

14) Description of the Proposed Amendment Effects & Any Additional Service :

This Contract was a result of RFP# 339.12-005 that was released on April 15, 2005. The RFP process resulted in the current contract with Guardian Healthcare Providers.

This amendment does not change the qualifications of the personnel, background check, or duties performed. The only effect is to utilize the option to extend the contract through Fiscal Year 2009.

15) Explanation of Need for the Proposed Amendment :

To provide adequate number of Licensed Registered Nurses to meet staffing standards.

16) Name & Address of Contractor's Current Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Renae McGregor, Chief Operating Officer, The Guardian Group, Inc., 105 West Park Drive, Suite 100, Brentwood, TN, 37027

17) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

18) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

19) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

The Request for Proposals (RFP) process was utilized, resulting in the contract being awarded to Guardian Healthcare Providers.

21) Justification for the Proposed Non-Competitive Amendment :

To utilize the term extension clause and extend the term of the current contract through June, 2009 and add additional dollars.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

Agency Head Signature

Date

CONTRACT SUMMARY SHEET

12-11-07

RFS #	Contract #
339 . 12 — 005 —	FA-06-16428-04
State Agency	State Agency Division
Mental Health and Developmental Disabilities	Western Mental Health Institute
Contractor Name	Contractor ID # (FEIN or SSN)
Guardian Healthcare Providers	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 621494290-00

Service Description			
Nursing Services			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
07/01/05	06/30/09	N/A	N/A

Mark Each TRUE Statement					
<input checked="" type="checkbox"/> Contractor is on STARS			<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
339.12	54100	084 441	11	N/A	N/A
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$1,794,000.00				\$1,794,000.00
2007	\$935,512.00				\$935,512.00
2008	\$973,388.00				\$973,388.00
2009	\$976,781.00				\$976,781.00
TOTAL:	\$4,679,681.00				\$4,679,681.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Gene Wood 12 th Floor, Andrew Johnson Tower 615-532-6676 State Agency Budget Officer Approval	
2006	\$1,794,000.00			
2007	\$935,512.00			
2008	\$973,388.00			
2009		\$976,781.00		
			Funding Certification (certification required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
TOTAL:	\$3,702,900.00	\$976,781.00		
End Date:	06/30/08	06/30/09		

Contractor Ownership (complete for ALL base contracts—N/A to amendments or delegated authorities)				
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT Minority/Disadvantaged	
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities)				
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *		
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)			
* Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)				

**AMENDMENT FOUR
TO FA 06 16428 00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, Western Mental Health Institute, hereinafter referred to as the "State" and Guardian Healthcare Providers, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B.1. is deleted in its entirety and replaced with the following:
B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2005, and ending on June 30, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:
C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million, Six Hundred Seventy-Nine Thousand, Six Hundred Eighty-One Dollars (\$4,679,681.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

3. The text of Contract Section C.3. is deleted in its entirety and replaced with the following:
 - a. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

In the event the contract is amended to extend for additional years, the following formula will be used to calculate each year's cost per hour. The Consumer Price Index, medical care, information can be found on the U.S. Government website at: <http://www.bls.gov/cpi/cpifact3.htm>
 - b. For services performed from July 1, 2005, through June 30, 2006, the Contractor shall be compensated based upon the following rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$64.00
Licensed Practical Nurse	\$42.00

- c. For services performed from July 1, 2006 through June 30, 2007, the Contractor shall be compensated based upon the following payment rates with the exception of EB3 Visa Program Registered Nurses: **4.3% increase of FY 2006 rate.**

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$66.75
Licensed Practical Nurse	\$43.80

The Contractor shall be compensated at the **Payment Rate of \$48.50** per hour for Registered Nurses working at Western Mental Health Institute under the EB3 Visa Program from December 15, 2006 through June 30, 2007.

- d. For services performed from July 1, 2007 through June 30, 2008, the Contractor shall be compensated based upon the following payment rates with the exception of EB3 Visa Program Registered Nurses: **3.6% increase of FY 2007 rate.**

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$69.15
Licensed Practical Nurse	\$45.38

The Contractor shall be compensated at the **Payment Rate of \$48.50** per hour for Registered Nurses working at Western Mental Health Institute under the EB3 Visa Program from July 1, 2007 through June 30, 2008.

- e. For services performed from July 1, 2008 through June 30, 2009, the Contractor shall be compensated based upon the following payment rates with the exception of EB3 Visa Program Registered Nurses: **5.2% increase of FY 2008 rate.**

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$72.75
Licensed Practical Nurse	\$47.74

The Contractor shall be compensated at the **Payment Rate of \$48.50** per hour for Registered Nurses working at Western Mental Health Institute under the EB3 Visa Program from July 1, 2008 through June 30, 2009.

- f. If services are performed from July 1, 2009, through June 30, 2010, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.e. above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2008 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
- g. If services are performed by Registered Nurses working at the State under the EB3 Visa Program from July 1, 2008 through June 30, 2010, the Contractor shall be compensated based upon the payment methodology in Section C.3.e. and C.3.f.

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

The Contractor shall bill only for the hours worked. The Contractor shall not bill more than the hourly rate even if the Contractor works more than twelve and one-half (12 1/2) hours in a day.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

The revisions set forth herein shall be effective July 1, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

Guardian Healthcare Providers, Inc.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

Department of Mental Health & Developmental Disabilities:

Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner

DATE

APPROVED:

**M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DATE

**DEBORAH E. STORY, COMMISSIONER
DEPARTMENT OF HUMAN RESOURCES**

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

CONTRACT SUMMARY SHEET

060706

RFS #	Contract #
339.12-005-06	FA—06—16428—03
State Agency	State Agency Division
Mental Health and Developmental Disabilities	Western Mental Health Institute
Contractor Name	Contractor ID # (FEIN or SSN)
Guardian Healthcare Providers	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 621494290-00

Service Description			
Nursing Services			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
7/1/2005	6/30/08	N/A	N/A

Mark Each TRUE Statement					
<input checked="" type="checkbox"/> Contractor is on STARS			<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
339.12	54100	084 441	11	N/A	N/A
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$1,794,000.00				\$1,794,000.00
2007	\$935,512.00				\$935,512.00
2008	\$973,388.00				\$973,388.00
					\$0.00
					\$0.00
TOTAL:	\$3,702,900.00				\$3,702,900.00

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Gene Wood 12th Floor, Andrew Johnson Tower 615-532-6676
2006	\$1,794,000.00		State Agency Budget Officer Approval
2007	\$935,512.00		
2008		\$973,388.00	
TOTAL	\$2,729,512.00	\$973,388.00	Funding Certification (certification required by 41 C.F.R. § 94-51.13 that there is a balance in the appropriation from which the obligated expenditures required to be paid that is not otherwise encumbered to pay obligations previously incurred)
End Date	6/30/2007	6/30/2008	

Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities) N/A			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (e.g., ID, GG, GU)	<input type="checkbox"/> Other	

Procurement Process Summary (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

JUN - 5

RECEIVED
 MAY 29 PM 2:12
 OFFICE OF
 MANAGEMENT
 & FINANCE

**AMENDMENT THREE
TO CONTRACT FA 06 16428 00**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, Western Mental Health Institute, hereinafter referred to as the State, and Guardian Healthcare Providers, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section A.1. in its entirety and insert the following in its place:

- A.1. The contractor agrees to provide Registered Nurses and Licensed Practical Nurses. Western Mental Health Institute requires the services of Registered Nurses and Licensed Practical Nurses for the care and treatment of approximately 247 psychiatric patients (54 Acute Adults, 153 Long Term Care Adults, 40 Children and Adolescents). Coverage must be provided twenty-four (24) hours per day, seven (7) days per week. The State shall not be obligated to use any particular minimum number of personnel. The Nurse Executive of WMHI will base the need for Registered Nurses and Licensed Practical Nurses on a review of the patient load and available staff. Requests for services will be coordinated between the Contractor or his/her representative and the Nurse Executive of WMHI. Work hours are defined as actual work time on duty at Western Mental Health Institute.

Registered Nurses (as needed) (up to 30 shifts per week at 12.5 hours per shift)

Licensed Practical Nurses (as needed) (up to 1 shift per week at 12.5 hours per shift)

This is an estimated maximum number of personnel to be used as needed. The State shall not be obligated to use a particular minimum number of personnel. Work hours are defined as actual work time of duty at Western Mental Health Institute. The State will not pay overtime rates beyond the 40-hour workweek. It is the contractor's responsibility to monitor the agency nurses' time to insure no agency employee works beyond 40 hours per week. No additional pay is made for weekends and holidays; except for the Holidays listed in this Scope of Services under A.9. Time and Attendance.

These staff nurses may be scheduled to work on either of the shifts based on the staff needs as determined by Western Mental Health Institute. Nurses must be available within four (4) hours of call to agency. The Contractor must respond either affirming or passing its ability to provide the requested services in the required time frame. Failure to respond or late response will be deemed a denial. Detailed records of each contact will be kept.

Nurses scheduled in advance may be cancelled with a four (4) hour notice prior to the start of the shift without any charge to Western Mental Health Institute. Notice to the agency of less than four (4) hours notice will result in a maximum of four (4) hours being billed to the State.

2. Delete Section B.1. in its entirety and insert the following in its place:

- B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2005, and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

3. Delete Section C.1. in its entirety and insert the following in its place:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Million, Seven Hundred Two Thousand, Nine Hundred Dollars (\$3,702,900.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor

performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

4. Delete Section C.3. in its entirety and insert the following in its place:

- a. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

In the event the contract is amended to extend for additional years, the following formula will be used to calculate each year's cost per hour. The Consumer Price Index, medical care, information can be found on the U.S. Government website at: <http://www.bls.gov/cpi/cpifact3.htm>

- b. For services performed from July 1, 2005, through June 30, 2006, the Contractor shall be compensated based upon the following rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$64.00
Licensed Practical Nurse	\$42.00

- c. For services performed from July 1, 2006 through June 30, 2007, the Contractor shall be compensated based upon the following payment rates with the exception of EB3 Visa Program Registered Nurses: **4.3% increase of FY 2006 rate.**

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$66.75
Licensed Practical Nurse	\$43.80

The Contractor shall be compensated at the **Payment Rate of \$48.50** per hour for Registered Nurses working at Western Mental Health Institute under the EB3 Visa Program from December 15, 2006 through June 30, 2007.

- d. For services performed from July 1, 2007 through June 30, 2008, the Contractor shall be compensated based upon the following payment rates with the exception of EB3 Visa Program Registered Nurses: **3.6% increase of FY 2007 rate.**

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$69.15
Licensed Practical Nurse	\$45.38

The Contractor shall be compensated at the **Payment Rate of \$48.50** per hour for Registered Nurses working at Western Mental Health Institute under the EB3 Visa Program from July 1, 2007 through June 30, 2008.

- e. If services are performed from July 1, 2008, through June 30, 2009, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.d. above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2007 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).

- f. If services are performed from July 1, 2009, through June 30, 2010, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.e. above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100 published by the United States Department of

Labor, Bureau of Labor Statistics in December 31, 2008 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).

- g. If services are performed by Registered Nurses working at the State under the EB3 Visa Program from July 1, 2008 through June 30, 2010, the Contractor shall be compensated based upon the payment methodology in Section C.3.e. and C.3.f.

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

The Contractor shall bill only for the hours worked. The Contractor shall not bill more than the hourly rate even if the Contractor works more than twelve and one-half (12 1/2) hours in a day.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

GUARDIAN HEALTHCARE PROVIDERS

Shawn M. Gray, COO 3/15/07
NAME AND TITLE DATE

Renae McGregor, Chief Operating Officer
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

DEPARTMENT OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES:

Virginia J. Betts 3-28-07
VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN, COMMISSIONER DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr. 5/25/07
M. D. GOETZ, JR., COMMISSIONER DATE

DEPARTMENT OF PERSONNEL:

NOT APPLICABLE

DEBORAH E. STORY, COMMISSIONER DATE

COMPTROLLER OF THE TREASURY:

John G. Morgan 5/30/07
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

**AMENDMENT TWO
TO CONTRACT FA 06 16428 00**

This Contract, by and between the State of Tennessee, Mental Health and Developmental Disabilities, Western Mental Health Institute, hereinafter referred to as the State, and Guardian Healthcare Providers, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section C.3. in its entirety and insert the following in its place:

C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates.

- a. For services performed from July 1, 2005, through June 30, 2006, the Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$64.00
Licensed Practical Nurse	\$42.00

- b. For services performed from July 1, 2006, through June 30, 2007, the Contractor shall be compensated based upon following rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$66.75
Licensed Practical Nurse	\$43.80

- c. If services are performed from July 1, 2007, through June 30, 2008, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.b. above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2006 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
- d. If services are performed from July 1, 2008, through June 30, 2009, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.c. above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2007 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
- e. If services are performed from July 1, 2009, through June 30, 2010, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.d. above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2008 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
- f. For services performed by Registered Nurses working at the State under the EB3 Visa Program from December 15, 2006 through June 30, 2007, the Contractor shall be compensated based upon the following Payment Rate:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$48.50

- g. If services are performed by Registered Nurses working at the State under the EB3 Visa Program from July 1, 2007 through June 30, 2010, the Contractor shall be compensated based upon the payment methodology in Section C.3.c., C.3.d. and C.3.e..

The Contractor shall bill only for the hours worked. The Contractor shall not bill more than the hourly rate even if the Contractor works more than twelve and one-half (12 1/2) hours in a day.

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated.

- 2. Add the following as Section D.8. and renumber any subsequent sections as necessary:

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- 3. Add the following as Section E.11 and renumber any subsequent sections as necessary:

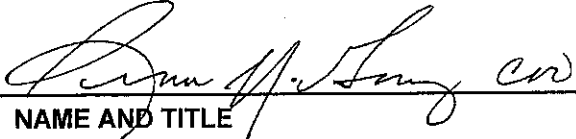
E.11. EB3 Visa Employees. The Contractor acknowledges and understands that it is the responsibility of the Contractor and the Contractor must obtain the approval of both the U.S. Department of Labor (DOL) and the U.S. Citizenship and Immigration Services prior to providing EB3 Registered Nurses to the State under the terms of this Contract. The Contractor is responsible for complying with all Federal requirements under the EB3 Visa Program and ensuring continued compliance with all Federal regulations related to the EB3 Visa Program during the course of this Contract.

- a. This Contract does not imply that the State will employ a minimum or maximum number of Registered Nurses under the EB3 program. The employment of EB3 Registered Nurses is at the sole discretion of the State.
- b. All Registered Nurses employed under Section E.11 may be employed for any period of time covered under this Contract.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

GUARDIAN HEALTHCARE PROVIDERS, INC.:

 12/19/06
NAME AND TITLE DATE

Renae McGregor, Chief Operating Officer

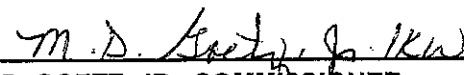
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

DEPARTMENT OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES:

 12-20-06
Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

 12-21-06
M. D. GOETZ, JR., COMMISSIONER DATE

DEPARTMENT OF PERSONNEL:

NOT APPLICABLE

DEBORAH E. STORY, COMMISSIONER DATE

COMPTROLLER OF THE TREASURY:

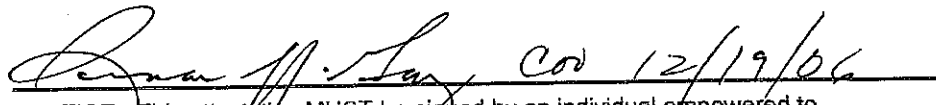
 12/28/06
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT
PERFORMANCE**

SUBJECT CONTRACT NUMBER:	FA - 06 -16428 -00
CONTRACTOR LEGAL ENTITY NAME:	Guardian Healthcare Providers, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	62-1494290

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &
DATE:**

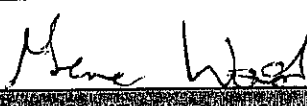
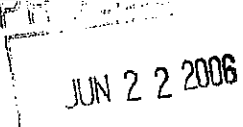
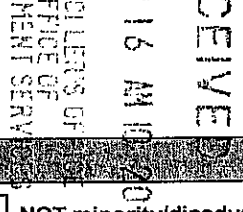
 COV 12/19/06

NOTICE. This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

CONTRACT SUMMARY SHEET

021406

IRFS#				Contract#			
339.12-005				FA 06 16428 01			
State Agency				State Agency Division			
Mental Health and Developmental Disabilities				Western Mental Health Institute			
Contractor Name				Contractor ID# (FEIN or SSN)			
Guardian Healthcare Providers				<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 621494290-00			
Service Description							
Nursing Services							
Contract Begin Date		Contract End Date		SUBRECIPIENT or VENDOR?		CFDA#	
7/1/2005		6/30/07					
Mark Each TRUE Statement							
<input checked="" type="checkbox"/> Contractor is on STARS				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code		Cost Center		Object Code		Fund	
339.12		54100		084 441		11	
Funding Grant Code		Funding Subgrant Code					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2006				\$1,794,000.00	\$1,794,000.00		
2007				\$935,512.00	\$935,512.00		
TOTAL:					\$2,729,512.00	\$2,729,512.00	

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Gene Wood 12 th Floor, Andrew Johnson Tower 615-532-6676	
2006	\$1,794,000.00		State Agency Budget Officer Approval  Funding Certification (certification required by 50 USC 5915(a)(1)(B) that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred.)	
2007		\$935,512.00		
TOTAL	\$1,794,000.00	\$935,512.00	 	
End Date	6/30/06	6/30/07		

Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> NOT minority/disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—		
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities)					
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method			
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (e.g., ID, AS, GU)	<input type="checkbox"/> Other			
Procurement Process Summary (complete for selection by Alternative Methods, Competitive Negotiation, Non-Competitive Negotiation, OR Other)					

2006 DEC 21 PM 2:18

RECEIVED

**AMENDMENT ONE
TO CONTRACT FA 06 16428 00**

This Contract, by and between the State of Tennessee, Mental Health and Developmental Disabilities, Western Mental Health Institute, hereinafter referred to as the State, and Guardian Healthcare Providers, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section A.1. in its entirety and insert the following in its place:

A.1. The contractor agrees to provide Registered Nurses and Licensed Practical Nurses.

Western Mental Health Institute requires the services of Registered Nurses and Licensed Practical Nurses for the care and treatment of approximately 247 psychiatric patients (54 Acute Adults, 153 Long Term Care Adults, 40 Children and Adolescents). Coverage must be provided twenty-four (24) hours per day, seven (7) days per week. The State shall not be obligated to use any particular minimum number of personnel. The Nurse Executive of WMHI will base the need for Registered Nurses and Licensed Practical Nurses on a review of the patient load and available staff. Requests for services will be coordinated between the Contractor or his/her representative and the Nurse Executive of WMHI. Work hours are defined as actual work time on duty at Western Mental Health Institute.

Registered Nurses (as needed) (up to 15 shifts per week at 12.5 hours per shift)

Licensed Practical Nurses (as needed) (up to 10 shifts per week at 12.5 hours per shift)

This is an estimated maximum number of personnel to be used as needed. The State shall not be obligated to use a particular minimum number of personnel. Work hours are defined as actual work time of duty at Western Mental Health Institute. The State will not pay overtime rates beyond the 40-hour workweek. It is the contractor's responsibility to monitor the agency nurses' time to insure no agency employee works beyond 40 hours per week. No additional pay is made for weekends and holidays; except for the Holidays listed in this Scope of Services under A.9. Time and Attendance.

These staff nurses may be scheduled to work on either of the shifts based on the staff needs as determined by Western Mental Health Institute. Nurses must be available within four (4) hours of call to agency. The Contractor must respond either affirming or passing its ability to provide the requested services in the required time frame. Failure to respond or late response will be deemed a denial. Detailed records of each contact will be kept.

Nurses scheduled in advance may be cancelled with a four (4) hour notice prior to the start of the shift without any charge to Western Mental Health Institute. Notice to the agency of less than four (4) hours notice will result in a maximum of four (4) hours being billed to the State.

2. Delete Section B.1. in its entirety and insert the following in its place:

B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2005, and ending on June 30, 2007. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

3. Delete Section C.1. in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Million Seven Hundred Twenty-Nine Thousand, Five Hundred Twelve Dollars (\$2,729,512.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to

the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

4. Delete Section C.3. in its entirety and insert the following in its place:

C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates.

- a. For services performed from July 1, 2005, through June 30, 2006, the Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$64.00
Licensed Practical Nurse	\$42.00

- b. In the event the contract is amended to extend for additional years, the following formula will be used to calculate each year's cost per hour. The Consumer Price Index, medical care, information can be found on the U.S. Government website at:

<http://www.bls.gov/cpi/cpifact3.htm>

1. For services performed from July 1, 2006, through June 30, 2007, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2005 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %). = 4.3% increase.

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$66.75
Licensed Practical Nurse	\$43.80

2. For services performed from July 1, 2007, through June 30, 2008, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2006 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
3. For services performed from July 1, 2008, through June 30, 2009, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2007 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
4. For services performed from July 1, 2009, through June 30, 2010, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States

Department of Labor, Bureau of Labor Statistics in December 31, 2008 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).

The Contractor shall bill only for the hours worked. The Contractor shall not bill more than the hourly rate even if the Contractor works more than twelve and one-half (12 1/2) hours in a day.


The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF,

GUARDIAN HEALTHCARE PROVIDERS, INC.:

 4/6/06
CONTRACTOR SIGNATURE DATE

Renae M. Gregor, Chief Operating Officer
CONTRACTOR SIGNATORY PRINTED NAME AND TITLE

DEPARTMENT OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES:

 6-5-06
Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner DATE

APPROVED:

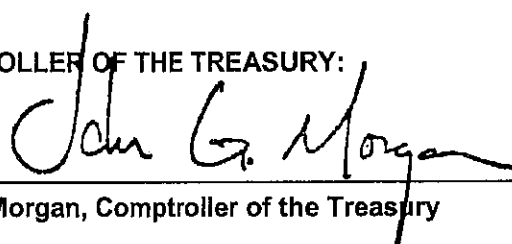
DEPARTMENT OF FINANCE AND ADMINISTRATION:

 J/KS 6/15/06
M. D. Goetz, Jr., Commissioner DATE

DEPARTMENT OF PERSONNEL:

N/A
Nat E. Johnson, Acting Commissioner DATE

COMPTROLLER OF THE TREASURY:

 6/19/06
John G. Morgan, Comptroller of the Treasury DATE

DIRECTOR OF ACCOUNTS

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES,
WESTERN MENTAL HEALTH INSTITUTE
AND
GUARDIAN HEALTHCARE PROVIDERS, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, Western Mental Health Institute, hereinafter referred to as the "State" and Guardian Healthcare Providers, hereinafter referred to as the "Contractor," is for the provision of Nursing Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is A FOR-PROFIT CORPORATION. The Contractor's address is:

109 West Park Drive, Suite 300
Brentwood, TN 37027

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

A.1. The contractor agrees to provide Registered Nurses and Licensed Practical Nurses.

Western Mental Health Institute requires the services of Registered Nurses and Licensed Practical Nurses for the care and treatment of approximately 247 psychiatric patients (54 Acute Adults, 153 Long Term Care Adults, 40 Children and Adolescents). Coverage must be provided twenty-four (24) hours per day, seven (7) days per week. The State shall not be obligated to use any particular minimum number of personnel. The Nurse Executive of WMHI will base the need for Registered Nurses and Licensed Practical Nurses on a review of the patient load and available staff. Requests for services will be coordinated between the Contractor or his/her representative and the Nurse Executive of WMHI. Work hours are defined as actual work time on duty at Western Mental Health Institute.

Registered Nurses (as needed) (up to 30 shifts per week at 12.5 hours per shift)

Licensed Practical Nurses (as needed) (up to 20 shifts per week at 12.5 hours per shift)

This is an estimated maximum number of personnel to be used as needed. The State shall not be obligated to use a particular minimum number of personnel. Work hours are defined as actual work time of duty at Western Mental Health Institute. The State will not pay overtime rates beyond the 40-hour workweek. It is the contractor's responsibility to monitor the agency nurses' time to insure no agency employee works beyond 40 hours per week. No additional pay is made for weekends and holidays; except for the Holidays listed in this Scope of Services under A.9. Time and Attendance.

These staff nurses may be scheduled to work on either of the shifts based on the staff needs as determined by Western Mental Health Institute. Nurses must be available within four (4) hours of call to agency. The Contractor must respond either affirming or passing its ability to provide the requested services in the required time frame. Failure to respond or late response will be deemed a denial. Detailed records of each contact will be kept.

Nurses scheduled in advance may be cancelled with a four (4) hour notice prior to the start of the shift without any charge to Western Mental Health Institute. Notice to the agency of less than four (4) hours notice will result in a maximum of four (4) hours being billed to the State.

A.2. The Contractor agrees that it shall not provide any services pursuant to this contract until the following conditions are met:

A.2.a The Contractor shall screen all staff provided to Western Mental Health Institute under this contract and certify that all Registered Nurses and Licensed Practical Nurses are licensed by the State of

Tennessee. Copies of certifications, transcripts, licensure and curriculum vitae and professional references must be provided to Western Mental Health Institute by the Contractor.

- A.2.b Contractor has verified personal and professional references and conducted a criminal background check to insure that no candidate has been convicted of a felony or has current charges outstanding which would constitute a felony in the State of Tennessee. In addition no candidate appears on the TBI Sexual Offender Registry or the Elderly Abuse Registry.
- A.2.c Contractor shall warrant that all candidates are drug free and provide annual drug screens, as well as random drug screening at the request of the State. Contractor will warrant that no candidates are in the Nursing Peer Assistance Program. Western Mental Health Institute will not accept any candidate in the Nursing Peer Assistance Program.
- A.2.d The Contractor warrants that no candidate who is a former employee of the State of Tennessee shall be referred within six (6) months of such person's final separation from employment with the State of Tennessee or during the period the former employee is eligible for re-employment with the State of Tennessee in accordance with the Rule Number 1120-2-10(8) of the rules of the Tennessee Department of Personnel. Further, no former employee shall be referred who was dismissed for cause, or with or without cause during a probationary period, or resigned not in good standing from employment with the State of Tennessee.
- A.2.e The Contractor's personnel shall not be deemed for any purpose to be employees of the State. With respect to the Contractor's personnel, the Contractor shall be responsible for payroll, benefits, workers compensation, withholding of all state and federal taxes, and depositing same at the appropriate times and places.
- A.2.f The Contractor agrees that the State will not pay any liquidated damages or other fees to the Contractor in the event of the subsequent employment by the State of an employee of the Contractor.
- A.2.g The State shall be the sole judge of the Contractor's personnel performance. The Contractor agrees to remove and replace (at its own expense) any personnel judged by the State as not providing satisfactory services. The Contractor further agrees not to charge the State for any services performed which the State designates as being unacceptable.
- A.2.h The Contractor agrees to provide proof of professional liability insurance amounting to not less than one million dollars (\$1,000,000.00) per each occurrence and at least three million dollars (\$3,000,000.00) general aggregate, prior to providing services pursuant to this contract.

A.3. The Contractor agrees that all services provided will meet or exceed the following standards and laws:

- A.3.a All applicable Medicare and Medicaid standards and regulations.
- A.3.b All standards required by The Joint Commission on Accreditation of Hospitals.
- A.3.c Western Mental Health Institute Policies and Procedures.
- A.3.d Staff and Professional Bylaws of Western Mental Health Institute.
- A.3.e Tennessee Nurse Practice Act.
- A.3.f Title 33, Tennessee Code annotated.

A.4. The Contractor shall be responsible for providing the following Nursing Services:

A.4.a. Each Registered Nurse and Licensed Practical Nurse shall be responsible for the delivery of continuous and comprehensive nursing services which are consistent with current standards of nursing practice and in accordance with current Western Mental Health Institute Policies and Procedures. The Contractor shall insure that RNs supplied under this contract have the following skills:

A.4.a.1. Registered Nurses will be responsible for implementation of the following skills and be able to:

A.4.a.1.a. Implement the nursing process:

- ◆ Assess patients' physical and psychiatric problems/needs.

- ◆ Plan and implement nursing interventions appropriate to the patient(s) problem/needs.
- ◆ Evaluate the effectiveness of nursing interventions.

A.4.a.1.b. Administer Medication:

- ◆ Know the therapeutic dosage usage and effects of medication.
- ◆ Monitor and recognize the side effects of medications.
- ◆ Recognize and report adverse responses to medication.
- ◆ Accurately documents medication administration, therapeutic responses, side effects and adverse reactions.
- ◆ Make appropriate notification to M.D. of any untoward patient response to medication.
- ◆ Follows all Western Mental Health Institute policies and procedures related to medications.

A.4.a.1.c. Transcribe and Implement Physician Orders:

- ◆ Transcribes and implements physicians' orders according to Western Mental Health Institute policies and procedures and accepted nursing practice standards.
- ◆ Follows Western Mental Health Institute policies and procedures related to physicians' order transcription and implementation, i.e., signatures, co-signatures, time frames and other documentation.

A.4.a.1.d. Therapeutically interact with and communicate with patients:

- ◆ Understand principles of and utilize therapeutic interventions and communication with patients.
- ◆ Treat patients with respect and dignity, and honor their rights and confidentiality according to Western Mental Health Institute policies and procedures.
- ◆ Participate in and document nursing interventions in both psychiatric and medical crises.

A.4.a.1.e. Provide supervision to unlicensed staff:

- ◆ Provide clinical supervision to Psychiatric Technicians who are engaged in special patient observations, i.e., one to one; 15-minute checks; seclusion and restraint; according to Western Mental Health Institute policies and procedures.
- ◆ Provide administrative supervision to unlicensed staff regarding unit/patient assignments, breaks, escorts and meeting patient needs.

A.4.a.1.f. Communicate and document pertinent clinical and administrative information:

- ◆ Notifies physician and nursing supervisor appropriately of clinical and administrative crises and documents these efforts.
- ◆ Documents pertinent nursing interventions and patient responses in patient record.
- ◆ Completes Incident Reports and Tennessee Occupational Safety and Health Administration (TOSHA) reports as defined by Western Mental Health Institute policies and procedures.

A.4.a.2. Each Licensed Practical Nurse shall be responsible for the implementation of the following skills and be able to:

A.4.a.2.a Know the therapeutic dosage range and effects of medication.

A.4.a.2.b Monitor and recognize the side effects of medications.

A.4.a.2.c Recognize and report adverse responses to medication.

A.4.a.2.d Accurately document medication administration, therapeutic responses, side effects and adverse reactions.

A.4.a.2.e Follows all Western Mental Health Institute policies and procedures related to medication.

A.4.a.2.f Transcribe and Implement Physician Orders:

- ◆ Transcribes and implements physicians' orders according to Western Mental Health Institute policies and procedures and accepted nursing practice standards.
- ◆ Follows Western Mental Health Institute policies and procedures related to physicians' order transcription and implementation, i.e., signatures, co-signatures, time frames and other documentation.

A.4.a.2.g Therapeutically interact with and communicate with patients:

- ◆ Understand principles of and utilize therapeutic interventions and communication with patients.
- ◆ Treat patients with respect and dignity, and honor their rights and confidentiality according to Western Mental Health Institute policies and procedures.
- ◆ Participate in and document nursing interventions in both psychiatric and medical crises.

A.4.a.2.h Provide supervision to unlicensed staff:

- ◆ Provides clinical supervision to Psychiatric Technicians regarding interpretation of or need for vital signs; signs and/or symptoms of adverse responses to medications that need to be immediately reported; interpretation of special observations for patients.

A.4.a.2.i Communicate and document pertinent clinical and administrative Information:

- ◆ Notifies physician and nursing supervisor appropriately of clinical and administrative crises and documents these efforts.
- ◆ Documents pertinent nursing interventions and patient responses in patient record.
- ◆ Completes Incident Reports and TOSHA reports as defined by Western Mental Health Institute policies and procedures.
- ◆ Follow and complete all work assigned by licensed staff.
- ◆ Independently seeks patient information, assistance and/or supervision when unsure about how to provide patient care.

A.4.a.2.j Communicate and/or document pertinent clinical and administrative information.

- ◆ Communicate and/or notifies, and documents pertinent patient behavior, verbalizations and symptoms to licensed staff.
- ◆ Completes Incident Reports and TOSHA reports as indicated.

A.4.a.2.k Therapeutically interact with and communicate with patients:

- ◆ Understand principles of and utilize therapeutic interventions and communication with patients.
- ◆ Treat patients with respect and dignity, and honor their rights and confidentiality according to Western Mental Health Institute policies and procedures.

A.5. Minimum Educational & Training requirements:

A.5.a. Each nurse must have the appropriate current active license from the State of Tennessee as well as the following:

A.5.a.1. At least one (1) year of nursing experience is required. (Proof of experience in nursing must be validated in writing.) Psychiatric nursing experience of one (1) year or more is preferred.

A.5.a.2. Each nurse must be qualified in cardio-pulmonary resuscitation (CPR) procedures. The Contractor must provide written verification at the time each of its nurses are assigned to Western Mental Health Institute that the nurse is currently certified in CPR procedures. The initial and all subsequent verifications should include the effective date. The Contractor must provide this verification for each of its nurses annually at the time the nurse completes his/her required CPR training. No nurse will be allowed to work under this contract without a current CPR certification.

A.5.a.3. Contractor must provide annual in-services on CPR and Infection Control for all staff members and provide proof to Western Mental Health Institute.

A.6. Immunization and Staff Nurse Health Records:

Each nurse's immunization status must include the results of a current tuberculosis skin test, and documentation that immunization against hepatitis B, hepatitis A, and tetanus was offered and either accepted or rejected. The Contractor must provide written documentation of such at the time each of its nurses is assigned to Western Mental Health Institute and must provide updated information for each nurse annually. The cost of tuberculosis testing and immunizations are to be paid by the Contractor.

A.7. Background Checks:

Each nurses' file must include the results of a background investigation that relates to the nurses employment history, and criminal history, including any confirmed history of sexual, physical, or mental abuse towards others. This investigation shall be conducted by the Contractor at its own expense for each of its nurses and the resulting information shall be provided to Western Mental Health Institute. Any changes in the status of the above information must be documented in the nurses' file immediately when the Contractor becomes aware of such changes.

Required Background Checks are to consist of the following:

1. Fingerprints
2. Identity and Employment Eligibility verification as required by Form I-9 of the U.S. Department of Justice.
3. Check of the TBI Sexual Offender Registry
4. Check of the Elderly Abuse Registry

NO SERVICES can be provided until approval is provided as a result of the background checks.

LISTS OF ACCEPTABLE DOCUMENTS

LIST A	LIST B	LIST C
Documents that Establish Both Identity and Employment Eligibility	Documents that Establish Identity	Documents that Establish Employment Eligibility
O	A	N
R	D	
1. US Passport (unexpired or expired)	1. Drivers license or ID card issued by a state outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color and address	1. US social security card issued by the Social Security Administration (other than a card stating it is not valid for employment)
2. Certificate of US Citizenship INS Form N-5560 or N-561	2. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350)
3. Certificate of Naturalization	3. School ID card with a photograph	3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
	4. Voter's registration card	
	5. US Military card or draft record	
	6. Military dependent's ID card	

A.8. Orientation, In-service Training, Competency and Performance Evaluation:

A.8.a. Western Mental Health Institute shall provide a one-day orientation to each nurse supplied under this contract. **There will be no payment to the contractor for this one day of training.**

A.8.b. All staff members supplied by the contractor must successfully complete a skills checklist and competency assessment required by Western Mental Health Institute initially and following orientation.

A.8.c. All orientation, in-service, education, and other training provided by the agency to its staff requires the agency to provide an outline of educational content to Western Mental Health Institute for Western Mental Health Institute staff development files.

A.9. Time and Attendance

<u>Shift</u>	<u>Time</u>	<u>Meal Break</u>	<u>Total Paid</u>
1	6:30 AM – 8:00 PM	1 hour	12.5 hours
2	5:30 PM – 7: 00 AM	1 hour	12.5 hours

Payment is authorized only for 12.5 hours/shift with the expectation that the nurse will take a full meal break. If the agency staff member is late or leaves early, this time cannot be made up by shortening or eliminating a meal break.

Holiday rates will be paid only for the following State and Federal holidays at the rate of one and one half (1½) times the regular hourly rate:

- ❖ New Years Day
- ❖ Memorial Day
- ❖ Independence Day
- ❖ Labor Day
- ❖ Thanksgiving Day
- ❖ Christmas Day

Overtime rates for time worked beyond 40 hours per week will not be paid by Western Mental Health Institute and the Contractor is responsible to monitor for and prevent overtime assignment of agency staff to Western Mental Health Institute.

It is the responsibility of the agency to provide replacement coverage if agency staff call in or fail to report for duty.

Only a Western Mental Health Institute Shift Supervisor is authorized to sign an agency staff's charge slip. Final approval is provided by the Nurse Executive or designee.

A.10. Standards of Practice. The Contractor agrees to abide by all applicable mental health institute policies and procedures while providing service to patients from Western Mental Health Institute and to fulfill any applicable requirements regarding treatment, patient confidentiality, and accreditation set forth by the Joint Commission on Accreditation of Health Organizations.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2005 and ending on June 30, 2006. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least ninety (90) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one million seven hundred ninety-four thousand dollars (\$1,794,000). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, profit and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Payment Rates in Section C.3. and the Maximum Liability of the State in Section C.1. under this Contract are firm for the duration of the Contract and are not subject to increase for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates.

- a. For services performed from July 1, 2005, through June 30, 2006, the Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE</u>	<u>PAYMENT RATE PER HOUR</u>
Registered Nurse	\$64.00
Licensed Practical Nurse	\$42.00

- b. In the event the contract is amended to extend for additional years, the following formula will be used to calculate each year's cost per hour. The Consumer Price Index, medical care, information can be found on the U.S. Government website at:

<http://www.bls.gov/cpi/cpifact3.htm>

1. For services performed from July 1, 2006, through June 30, 2007, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2005 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
2. For services performed from July 1, 2007, through June 30, 2008, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2006 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).
3. For services performed from July 1, 2008, through June 30, 2009, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers

(CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2007 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).

4. For services performed from July 1, 2009, through June 30, 2010, the Contractor shall be compensated based upon the Payment Rates fixed in Section C.3.a above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, medical care expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in December 31, 2008 and that figure published in the same month, 12-months prior, up to a maximum of seven percent (7 %).

The Contractor shall bill only for the hours worked. The Contractor shall not bill more than the hourly rate even if the Contractor works more than twelve and one-half (12 1/2) hours in a day.

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been

rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Richard Taylor, Fiscal Director
Western Mental Health Institute
Administration Building, 3rd Floor
11100 Old Hwy 64
Bolivar, TN 38008
731-228-2044
fax: 731-658-9822
e-mail: Richard.B.Taylor@state.tn.us

The Contractor:

Renae McGregor, RN
Chief Operating Officer
Guardian Healthcare Providers, Inc.
109 West Park Drive, Suite 300
Brentwood, TN 37027
615-377-9140, ext 218
fax: 615-661-6011
e-mail: rmcgregor@guardianhealthcare.com

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- I) The Contract document and its attachments
 - II) All Clarifications and addenda made to the Contractor's Proposal
 - III) The Request for Proposal and its associated amendments
 - IV) Technical Specifications provided to the Contractor
 - V) The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or

political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

- E.8. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.9. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

- E.10. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

Joe A. Orr, Pres. CEO 6/18/05
[NAME AND TITLE] Date

TENNESSEE DEPARTMENT OF MENTAL HEALTH AND DEVELOPEMENTAL DISABILITIES:

Virginia J. Betts 6-29-05
Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr. /sgt 7/18/05
M. D. Goetz, Jr., Commissioner Date

DEPARTMENT OF PERSONNEL:

NOT APPLICABLE

Randy C. Camp, Commissioner
Date

COMPTROLLER OF THE TREASURY:

John G. Morgan 7/22/05
John G. Morgan, Comptroller of the Treasury Date